

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

PRELIMINARY ORDER OF FORFEITURE

This matter is before the court on the motion of the United States for a Preliminary Order of Forfeiture as to Defendant Frank William Truitt, ("Truitt", "Defendant"), based upon the following:

1.

On May 9, 2017, a Superseding Indictment ("Indictment") was filed charging Truitt with:

Count 1: Drug trafficking conspiracy, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B) and 846 ;

Count 2: Conspiracy to use, carry and possess firearms in furtherance of a drug trafficking crime, in violation of 18 U.S.C. §924(o);

Count 16: Knowingly and intentionally did use a communication facility, to wit: a telephone, to facilitate the commission of a felony, under the Controlled Substances Act, to wit: conspiracy to possess with intent to distribute and possession with intent to distribute and distribution of heroin and marijuana, and cocaine and fentanyl, and did aid and abet each other in the commission of the aforesaid offense in violation of 21 U.S.C. § 841(a)(1), 843(b), 846 and 18 U.S.C. § 2.

2. Pursuant to Fed. R. Crim. P. 32.2(a), the Indictment contained a forfeiture allegation providing that upon Truitt's conviction, certain properties enumerated therein, or equivalent substitute assets, would be subject to forfeiture to the United States. As specified therein, such assets include, but are not limited to the following:

A

C a s h P r o c e e d s / M o n e y J u d g m e n t¹:

A sum of money equal to all property the Defendant obtained as a result of the drug offenses charged in the Indictment, and all interest and proceeds traceable thereto as a result for his violations of Title 18 and Title 21 offenses.

3. On March 21, 2017, a Bill of Particulars was filed with the court regarding property alleged in the Superseding Indictment filed May 9, 2017, as also being subject to forfeiture to the United States. Such property includes:

B

Firearm:

Smith and Wesson Model 686 .357 Magnum Revolver
Serial No.: SDL0455
Seized from Frank Truitt on February 15, 2017
Asset ID: 17-FBI-001540

C

Ammunition:

¹ The government is pursuing a money judgment against the Defendant. The total amount of a money judgment has not been calculated at this time. Pursuant to Rule 32.2(b)(2)(C) and (e)(1), this order will be amended when the specific amount of the money judgment has been determined by the court.

7 rounds of .38 ammunition
Seized from Frank Truitt on February 15, 2017
Asset ID: 17-FBI-001540

4. On July 18, 2017, Truitt signed an Amended Plea Agreement, agreeing to forfeiture and entered into a plea of guilty as to Counts 1 and 2 of the Superseding Indictment.

5. Based upon Defendant's conviction, the court has determined that the government has established the requisite nexus between the amount of proceeds and the personal property and the offenses for which Truitt has been convicted; therefore, the United States is entitled to a preliminary order of forfeiture, subject to the provisions of 21 U.S.C. § 853 governing third party rights. The court has further determined that the property described above is subject to forfeiture, pursuant to 18 U.S.C. § 924(d), 21 U.S.C. §§ 853 and 881, and 28 U.S.C. § 2461(c). Therefore, it is ORDERED that all property, real or personal, which constitutes or is derived from proceeds traceable to Defendant's violations of Title 18, United States Code, Section 924(o) and Title 21, United States Code, Sections 841, 843 and 846 are forfeited to the United States.

6

The Court further finds that one or more of the conditions set forth in Title 21, United States Code, Section 853(p), exists.

Accordingly, it is hereby **ORDERED**

1 The below-described property, and all right, title, and interest of the Defendant, Frank William Truitt, in and to such property, is hereby forfeited to the United States of

America, for disposition in accordance with law, subject to the rights of third parties in such property under 21 U.S.C. § 853(n):

A

Firearm:

Smith and Wesson Model 686 .357 Magnum Revolver
Serial No.: SDL0455
Seized from Frank Truitt on February 15, 2017
Asset ID: 17-FBI-001540

B

Ammunition:

7 rounds of .38 ammunition
Seized from Frank Truitt on February 15, 2017
Asset ID: 17-FBI-001540

2

FORFEITURE IS ENTERED against Frank William Truitt and in favor of the United States for an undetermined amount, along with appropriate costs and interest thereon at the rate provided for in 28 U.S.C. § 1961 as of the date of entry of judgment until paid in full. The United States may at any time move pursuant to Rule 32.2(e) to amend this Order of Forfeiture to substitute property to satisfy the money judgment.

3

The United States may sell or otherwise dispose of any substitute assets in accordance with law as required to satisfy the above imposed money judgment.

4

Upon entry of this Order, the United States Attorney is authorized to conduct proper discovery in identifying, locating, or disposing of the described property, or other

substitute assets, in accordance with Fed. R. Crim. P. 32.2(b)(3); and to commence proceedings that comply with statutes governing third party rights, if applicable.

5

The government is not required to publish notice regarding the personal money judgment against Defendant; however, the Order shall be recorded in the records of the County Clerk's Office in the County of the debtor's residence, place of business, and any and all other counties in which the debtor has either real or personal property, as a lien thereon.

6

The United States shall publish notice of this Order and its intent to dispose of the personal property in such manner as the Attorney General may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the said property.

7

Upon entry of this Order, the United States is authorized to seize the above-described property as directed by the United States Attorney's Office and to commence proceedings that comply with statutes governing third party rights.

8

Any person, other than the named Defendant, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property and for an amendment of the order of forfeiture, pursuant to 21 U.S.C. § 853(n)(6) and Fed. R. Crim. P. 32.2(c).

Any petition filed by a third party asserting an interest in the above-described property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the subject property, the time and circumstances of the petitioner's acquisition of the right, title or interest in such property, and additional facts supporting the petitioner's claim and the relief sought.

10.

After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Civil Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

11.

The United States shall have clear title to the property following the court's determination of all third party interests, or, if no petitions are filed, following the expiration of the period provided in 21 U.S.C. § 853(n)(2) for the filing of third party petitions.

12.

The court shall retain jurisdiction to resolve disputes which may arise and to enforce and amend this Order as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

13.

Upon entry of the criminal judgment, this Order becomes final as to Defendant, and shall be made a part of the sentence and included in the criminal judgment.

14.

The Clerk, United States District Court, shall provide one (1) certified copy of this
Order to the United States Attorney's Office.

AND IT IS SO ORDERED.

s/ Bruce Howe Hendricks
BRUCE HOWE HENDRICKS
UNITED STATES DISTRICT JUDGE

January 2, 2018
Florence, South Carolina